1950.

File No. O. Mamlatdar's Courts/50.

Legal Dept.

A **BRANCH**

Subject:—

Opinions under the Mamlatdar's Courts (Amdt.) Act, 1942.

E 13

File No. O. Mamlatdar's Courts/50.

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No. 19891. and End December 1949.

Sa Submitted with reference to R.D. office note at pages 5-7 ante. In Civil Revision Application No. 851 of 1947 between two private parties in which the question involved was whether the Collector could delegate his powers of revision under sub-section (2) of section 23 of the Mamlatdars' Court Act, 1905 (Bom.II of 1906) to the Deputy Collector, the High Court (Gajendragadkar J) has held that the Mamlatdars' Courts (Amendment) Act, 1942 (Bom.Act, XXIV of 1942) made by the Governor during the section 93 regime on 31-12-1942 and which inserted sub-section 2A in section 23 of the Mamlatdars' Courts Act, 1906, empowering the Collector to delegate his powers of revision to an Assistant Collector or Deputy Collector subordinate to him is ultra vires. Gajendragadkar J, accepted the argument advanced by Mr.B.N.Gokhale that in view of the proviso to sub-section(3) of section 93 of the Government of India Act 1935, which limited the period of the Proclamation to three years, there was no authority vesting in the Governor of Bombay on 31-12/1942 to make the amending Act.

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Office of the R.L.A.

The Mamlatdars' Courts (Amendment) Act, 1942: High Court decision re. validity of ---

The legal position stated by the Revenue Department is quite correct. Since the matter is already disposed of by the High Court No useful purpose would be served by briniging to the notice of the High Court the legal Position . The Revenue Department may proceed on the assumption that the High Court decision is not correct, and whenever a similar case is taken up to the High Court, it may be brought to the notice of the Legal Department so that Government Pleader High Court might be instructed to appear and argue the point.

Sd/-
7-1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 320 ,dated the 9th January 1950.

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